IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Stay Application No. 8611 of 2006
In
Writ Petition No. 933 (S/S) of 2006

1. Sampurna Nand Chandola, son of late Sri Ram Bharosa Chandola, Clerk in the office of Zila Shaksarta Samiti, Parade Ground, Dehrdun.

2. Kailash Chandra Joshi, son of Sri Jagdish Chandra Joshi, Clerk in the office of Zila Shaksarta Samiti, Parade Ground, Dehradun.

3. Mukesh Kumar, son of Sri Budh Ram, Peon, in the office of Zila Shaksarta Samiti, Parade Ground, Dehradun.

……Petitioners

V e r s u s

1. State of Uttaranchal through Secretary, Education Government of Uttaranchal, Dehradun.

2. Additional Secretary, (Basic), Education, Government of Uttaranchal, Dehradun.

… …Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.K. Posti, learned counsel for the petitioners and learned standing counsel for State of Uttaranchal on behalf of respondents.

By means of this writ petition, the petitioners have prayed for the following reliefs:

I. *Issue a writ, order or direction in the nature of Mandamus directing the respondents to give the approval of the absorption of the petitioners in the education department of the State Government.*

II. *issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

III. *award the special cost of the writ petition to the petitioner.*

The facts of the case are that on 12.07.2006, respondents were directed to show cause, why the petitioners have not been absorbed whereas Sri Meherwan Singh Bhandari, Rewadhar Upadhyay and Vijendra Singh Sindhawal, who are juniors to the petitioners, have been absorbed in the Education Department. Again on 03.08.2006 further two weeks' time was granted to the respondents to comply the order passed by this court. Thereafter, the case was listed number of times, however, till date no counter affidavit has been field by the respondents.

Learned standing counsel for the respondents has submitted that in spite of letter sent by him, he has not received instructions from the respondents in this connection.

The facts as narrated in the writ petition are that petitioner no. 1 was appointed as Clerk on 08.03.1994 in the office of Zila Shaksarta Samiti, against the sanctioned and vacant post. Appointment on the post was made by District Magistrate, who is Chairman of the Zila Shaksarta Samiti. Petitioner no. 2 was appointed as Clerk on 20.01.1994 against the sanctioned and vacant post by the District Magistrate. Petitioner no. 3 was appointed as Peon on 17.12.1993 in the same department.

A representation was made by petitioners to the District Magistrate, to absorb them in the Education department, consequently, on 27.07.2004 District Magistrate, Dehradun wrote a letter to the Secretary of Education, Government of Uttaranchal to absorb the candidates who are working in the literacy department of the Education Department. In response to the letter Additional Secretary, Basic on 20.08.2004 wrote a letter to the Director of Education whether the persons working in the Zila Shaksarta Samiti, can be absorbed in the education department or not? In turn, the Director of Education, vide letter dated 27.06.2005 addressed to State Government submitted that six persons are working in the literacy department and they can be absorbed in the education department (letter of director is annexed as Annexure no. 3 to the writ petition). Again vide letter dated 14.12.2005, Director of Education, informed the State Government that at present 777 posts are lying vacant and 583 posts are vacant in which direct recruitment is to be made.

Minister of Education also sought information about the absorption of petitioners and after perusal of the record Education Minister obtained approval from Hon'ble Chief Minister for absorption of six persons working in the literacy department for absorption in education department against the posts, which were lying vacant.

Again on 28.03.2006, the Additional Secretary Basic wrote a letter to Director of Education for absorption of six persons including the petitioners working in the literacy department asking the Director of Education for absorption

of petitioners whether the Rules are required to be amended or not? In reply to the aforesaid letter, Director of Education, vide his letter dated 01.04.2006 submitted that the Government may take decision and rules are not required to be amended. On 07.04.2006, Additional Secretary (Basic), Education, State of Uttaranchal, wrote a letter addressed to the Director of School Education, Uttaranchal or absorption of three persons namely, Sri Meherwan Singh Bhandari, Rewadhar Upadhyay and Vijendra Singh Sindhawal.

The submission of the learned counsel for the petitioners is that there was an order by the State Government and Director of Education, which was approved by the Chief Minister for absorption of six persons working in the literacy department, however, respondent chose only three persons for absorption in the Education Department and petitioners have been left out. The persons who have already been absorbed are juniors to the petitioners, which is clear from the appointment letters of the petitioners as well as appointment letters of three persons, who have been absorbed.

Recommendation has been made on the ground that these persons are working in the literacy department for so many years and since they have crossed the upper age limit they may be absorbed in the education department against the vacant posts. In pursuance to the aforesaid order dated 07.04.2006 three persons have already been absorbed, however, petitioners have been left out.

For the reasons recorded above, writ petition is allowed. Respondents are directed to take decision in the matter of the petitioners for absorption in the Education Department, in view of the recommendation made by the Director of Education and Education Minister as approved by the Chief Minister, State of Uttaranchal within a period of four weeks from the date of production of certified copy of this order.

Stay application no. 8611 of 2006 in finally disposed of accordingly. No order as to costs.

(M.M. Ghildiyal, J)

August 29, 2006
SKSharma